

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3528 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

GUJARAT RAJYA SHRAMJIVI KARMACHARI UNION

Versus

DY EXECUTIVE ENGINEER

Appearance:

MR DHARMESH V SHAH for Petitioner

MR DA BAMBHANIA for Respondents

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 11/09/96

ORAL JUDGEMENT

Rule. Mr. D.A. Bambhania, learned Solicitor to the Government, waives service of rule on behalf of the respondents. At the request of both the sides the matter is taken up for final disposal.

The petitioner challenges the decision of the Labour Commissioner dated 11.11.1995 at Annexure-D to the petition refusing to make a reference on the ground that the demands raised by the petitioner are not fit for making a reference. The petitioner Union had sought

reference raising the claim that the employees had a right to continue till the age of 60 years. The Labour Commissioner without giving any reasons has stated that this demand was not fit for being referred. The Supreme Court in Telco Convoy Drivers Mazdoor Sangh Vs. State of Bihar reported in AIR 1989 SC 1565 has clearly held that while exercising power under Section 10(1) the function of the appropriate Government is an administrative function and not a judicial or quasi-judicial function, and that the appropriate Government should not take upon itself the termination of the lis. It was held that the Government was entitled to form an opinion as to whether industrial dispute exists or is apprehended but this was not the same thing as to adjudicate the dispute itself on its merits. The Labour Commissioner while holding that the demands were not fit for reference virtually adjudicated on the merits of the dispute in contravention of the ratio of the decision of the Supreme Court in Telco's case (supra). The impugned order at Annexure-D refusing the reference on the ground that the demand was not proper is therefore set aside with a direction to the appropriate Government to reconsider the question as to whether an industrial dispute exists after hearing the petitioners in the matter and take a decision preferably within four weeks from the date of receipt of this order. Rule is made absolute accordingly with no order as to costs.

00000